yet it has been held that the right to regulate does not mean the right to destroy. See *Page* v. *Allen* (1865) 58 Pa. St. 338, 347.

Assuming the legislature to have the power to make a regulation in a given case, the question arises as to whether the regulation is directory or mandatory, that is, whether the failure to carry it out will avoid the election or not. If the regulation is directory, the failure to observe it will not avoid the election, if it is mandatory, it will. Thus in a recent case in Illinois, the court was called upon to construe two statutory provisions, one of which made it necessary that ballots be prepared within booths provided for that purpose, and the other of which required an election judge to put his initials on the back of the ballot handed to the voter. *Choisser* v. *York* (1904) 71 N. E. 940. All the judges agreed that the first direction was mandatory, but a difference of opinion prevailed as to the second. The general inclination is to regard directions as directory, where all has been done in good faith and the irregularities do not affect the result. *Collins* v. *Huff* (1879) 63 Ga. 207. Thus lack of qualification of election officers to hold their position, *Swepston* v. *Barton* (1882) 39 Ark. 549, or failure to certify the result in proper form, *Trimmier* v. *Bomar* (1883) 20 S. C. 354, or failure to file an oath, *Trimmier* v. *Bomar* supra, have not been held fatal. Whatever involves the secrecy of the ballot is, however, usually regarded as mandatory. The great desideratum of our method of voting is secrecy. Cooley, Const. Limitations, 6th ed., § 760, and whatever tends to impair it will be strictly scrutinized. The view of the principal case that failure to vote within the booth provided invalidated the votes so cast is entirely in accord with the principle of keeping inviolate the secrecy of the ballot. As to the construction of the second regulation here in question the matter seems more difficult. The legislature does not appear to have overstepped its power in making the regulation, though the dissenting opinion looks to that view. After adopting the opinion, however, that the legislature did not go beyond its legitimate sphere, it is doubtful, at least, whether the view of the court that the regulation was intended to be mandatory rather than directory is in accord with the weight of judicial opinion. The statutory requirement that the election judge write his initials on the back of the ballot does not seem to go to root of anything sufficiently vital to necessitate construing the statute as mandatory. See 3 COLUMBIA LAW REVIEW 51.

CONTRACTS TO GIVE SATISFACTION.—Where one contracts to do a certain thing to the satisfaction of another, should he be prevented from recovering because of the unreasonable, although bona fide dissatisfaction of that other? There seems to be no reason in the policy of the law why the parties to a contract should not agree that the decision of one of them or of a third party shall be conclusive as to performance. The courts, therefore, should not hesitate to enforce such a contract, and say that when a man contracts for an act that shall be satisfactory to himself, it was never intended to mean an act satisfactory to another or to a jury. It may be a perilous contract for a man to make, but having voluntarily undertaken it, the instru-

ment is to be interpreted in strict accordance with the intent of the parties as gathered from their expressions. This logical view is followed by the Iowa court in the recent case of *Inman Mfg. Co.* v. *American Cereal Co.* (1904) 100 N. W. 860.

The decisions of the various jurisdictions on this point are conflicting. The New York courts have practically gone the length of making contracts for the parties, holding, in a case where the production of a certificate of the water purveyor was a condition precedent to payment, that "It was necessary for the plaintiff either to prove upon the trial the making of such certificate, or to show that it was refused unreasonably and in bad faith. It was unreasonable to refuse it, if in contemplation of the contract, it ought to have been given. In such contemplation, it ought thus to have been given, when in very fact and beyond all pretence of dispute, the state of things existed to which the water purveyor was to certify, to wit: the full completion of the contract in each and every one of its stipulations." *Bowery Nat. Bank* v. *The Mayor, etc.* (1875) 63 N. Y. 336.

The tendency to thus give arbitrary construction to a contract is particularly noticeable in cases like building contracts where labor or services have been rendered or materials supplied and the situation is such that there will be absolute loss to the plaintiff if the matter be left entirely to the decision of another. Here the courts have gone great lengths in their efforts to accomplish substantial justice, sometimes holding that the presence of the words "in the best workmanlike manner," as in *Doll* v. *Noble* (1889) 116 N. Y. 230, or the mention of certain specific tests, as in *Hawkins* v. *Graham* (1889) 149 Mass. 284, indicated an intention to leave the final decision to the jury rather than to the judgment of the party contracting. The New York rule touching this class of cases FOLGER, J., has summed up as follows: "That which the law shall say a contracting party ought, in reason, to be satisfied with, that the law will say he is satisfied with." *City of Brooklyn* v. *Brooklyn City R. R. Co.* (1872) 47 N. Y. 479, also *Hummel* v. *Stern* (1895) 36 N. Y. Supp. 443.

But while the New York rule allows the court to controvert the express provisions of the contract in order to work out justice to the man who has agreed to polish the wood work in B's houses "in the best workmanlike manner and to B's satisfaction," *Doll* v. *Noble*, supra, it refuses to take such a step in aid of the maker of a lithographic design under similar conditions, *Gray* v. *Alabama Nat. Bank* (1891) 14 N. Y. Supp. 155, which being one of the so-called class of contracts involving personal taste or individual preference is interpreted strictly and the parties credited with meaning what they said. It is quite generally held that one agreeing to perform such services to the satisfaction of another, has assumed the risk of losing his compensation by reason of the bona fide dissatisfaction of that other no matter how unreasonable it may be. Such instances are, the making of a suit of clothes, *Brown* v *Foster* (1873) 113 Mass. 136; the moulding of a bust, *Zaleski* v. *Clarke* (1876) 44 Conn. 218; the painting of a picture, *Gibson* v. *Cranage* (1878) 39 Mich. 49; or the writing of a play, *Haven* v. *Russell* (1895) 34 N. Y. Supp. 292. On the general subject of the court's limitation upon a man's freedom to contract see 4 COLUMBIA LAW REVIEW 422.